

**Application No.:** 10/563,454  
**Filing Date:** January 18, 2007

### **REMARKS**

Claims 1-15 stand rejected. By this paper, Claim 7 is amended. The amendments add no new matter. Claims 11 and 12 are cancelled without prejudice to, or disclaimer of, the subject matter contained therein. Thus, Claims 1-10 and 13-15 are presented for further examination in light of the below remarks.

#### Rejection of Claims 7-15 under 35 U.S.C. § 112

Claims 7-15 have been rejected under 35 U.S.C. § 112 as being incomplete for omitting essential structural cooperative relationships of certain elements. In particular the Examiner indicates omitted structural cooperative relationships between the recited material recognition system, computer unit, and metering control unit.

By this paper, Applicant has amended claim 7 to recite an “apparatus for the continuous gravimetric metering of flowing materials for burner systems, with the instantaneous mass flow being determined and with the flowing materials being metered by means of a metering device, wherein there are provided a material recognition system for determining any kind of flowing material, a computer unit configured to receive information from the material recognition system and to determine the instantaneous calorific value of the flowing materials, and a metering control unit configured to adjust the output of the metering device to the set-point conveying rate based on the instantaneous calorific value.” Applicant respectfully submits that this amendment has addressed the Examiner’s concerns, and requests that the rejections under 35 U.S.C. § 112 be withdrawn.

#### Claim Objections

The Examiner has objected to Claim 11 and 12 for failing to disclose in either the specification of the drawings that the material recognition system is arranged in a flow meter. Although Applicant may not agree with the substance of these objections, solely to expedite prosecution, Applicant has cancelled Claims 11 and 12. Thus, Applicant respectfully requests that the Examiner’s objections to the claims be withdrawn.

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Objection to the Drawings

In the Office Action, the Examiner objected to the drawings under 37 CFR 1.83(a) for failing to show the material recognition system arranged in a flow meter. As discussed above, Applicant has now cancelled claims 11 and 12. Thus, Applicant respectfully requests that the Examiner's objections to the claims be withdrawn.

Rejection of Claims 1-3, 7-10, and 13 under 35 U.S.C. § 102(b) under Massen

The Examiner rejected Claims 1-3, 7-10, and 13 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,794,788 (Massen). Applicant respectfully submits that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *See* M.P.E.P. § 2131.

Independent Claim 1

Claim 1 recites "a method for the continuous gravimetric metering of flowing materials for burner systems, with the instantaneous mass flow being determined and the metering occurring with a metering device, wherein the type of each flowing material is determined, the known individual calorific value from the type of each flowing material is determined and the instantaneous calorific value of the flowing materials is determined from the determination of the mass flow and the output from the metering device is regulated in adjustment to the set-point conveying rate depending on the instantaneous calorific value."

Massen, in contrast, is directed to a sorting machine for *sorting discrete items*, and does not disclose an "apparatus and method for sorting materials providing a material recognition system... [in] which the output of the metering device... is adjusted to the set-point conveying rate depending on the instantaneous calorific value," as asserted by the Examiner. Applicant respectfully submits that Massen relates in no way to calorific values of flowing materials, as Massen instead deals with identifying discrete items based on appearance and sorting those items according to type. In fact, Massen makes no reference to calorific value anywhere in the disclosure. Thus, Applicant respectfully submits that Massen fails to disclose that "the known individual calorific value from the type of each flowing material is determined and the instantaneous calorific value of the flowing materials is determined," or that "the output from the

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metering device is regulated in adjustment to the set-point conveying rate depending on the instantaneous calorific value,” as recited in Claim 1.

The Examiner also asserts that the measuring field (48) is a “metering device,” as recited in Claim 1. As described in Massen, however, the measuring field (48) is a “relatively small” surface on the item (14) which reflects light to enable the identification of the material of the item (14). Thus, the measuring field 48 of Massen is merely a location on an item to be identified, and not a “metering device” as asserted by the Examiner. Accordingly, Applicant submits that Massen also fails to disclose “metering occurring with a metering device” as recited in Claim 1.

The applied prior art of record does not cure the above-noted deficiencies in the Massen reference. Because Massen fails to disclose each and every element of Claim 1, Applicant respectfully submits that the rejection of independent Claim 1 has been overcome.

#### Independent Claim 7

Claim 7 recites an “apparatus for the continuous gravimetric metering of flowing materials for burner systems, with the instantaneous mass flow being determined and with the flowing materials being metered by means of a metering device, wherein there are provided a material recognition system for determining any kind of flowing material, a computer unit configured to receive information from the material recognition system and to determine the instantaneous calorific value of the flowing materials, and a metering control unit configured to adjust the output of the metering device to the set-point conveying rate based on the instantaneous calorific value.”

Applicant respectfully submits that Massen fails to disclose at least “a computer unit configured to receive information from the material recognition system and to determine the instantaneous calorific value of the flowing materials,” as recited in Claim 7. As discussed above, “calorific value” has no relevance whatsoever to the disclosure of the Massen reference. In addition, the “computer (84)” cited by the Examiner as the claimed “computer unit” is *not* configured to “determin[e] instantaneous calorific value of the flowing materials,” as recited in Claim 7. Instead, the computer 84 of Massen is configured to estimate the size of a discrete item, and then link the weight and geometrical size of the body to determine whether the body is glass or plastic. (See Massen, col. 7, ll. 44-56). Thus, Applicant respectfully submits that Massen

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fails to disclose "a computer unit configured to receive information from the material recognition system and to determine the instantaneous calorific value of flowing materials," as recited in Claim 7. In addition, for similar reasons as those discussed above in connection with Claim 1, Applicant respectfully submits that Massen fails to disclose "the flowing materials being metered by means of a metering device."

The applied prior art of record does not cure these deficiencies in the Massen reference. Because Massen fails to disclose each and every element of Claim 7, Applicant respectfully submits that the rejection of independent Claim 7 has been overcome.

#### The Dependent Claims

Claims 2-6 depend directly or indirectly from Claim 1 and, thus, are patentable for at least the same reasons that Claim 1 is patentable over the applied art. Claims 8-10 and 13-15 depend directly or indirectly from Claim 7 and, thus, are patentable for at least the same reasons that Claim 7 is patentable over the applied art. Therefore, allowance of Claims 2-6, 8-10, and 13-15 is respectfully requested.

#### No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

### **CONCLUSION**

The undersigned has made a good faith effort to respond to all of the noted rejections and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped

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issues remain or if an issue requires clarification, the Examiner is respectfully requested to call Applicant's attorney in order to resolve any such issue promptly.

Applicant respectfully traverses each of the Examiner's rejections and each of the Examiner's assertions regarding what the prior art discloses or teaches, even if not expressly discussed herein. Although changes to the claims have been made, no acquiescence or estoppel is or should be implied thereby; such amendments are made only to expedite prosecution of the present application and are without prejudice to the presentation or assertion, in the future, of claims relating to the same or similar subject matter.

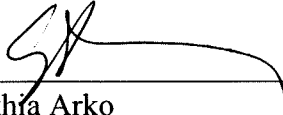
Any remarks in support of patentability of one claim should not be imputed to any other claim in this or a related application, even if similar terminology is used. Any remarks referring to only a portion of a claim should not be understood to base patentability on solely that portion; rather, patentability must rest on each claim taken as a whole. Any claim amendments which are not specifically discussed in the above remarks are not made for patentability purposes, and it is believed that the claims would satisfy the statutory requirements for patentability without the entry of such amendments. Rather, these amendments have only been made to increase claim readability, to improve grammar, and to reduce the time and effort required of those in the art to clearly understand the scope of the claim language.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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Dated: 12.03.2009

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